IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2872 OF 2006

Shri Giridharilal Seksaria ..Applicant
Vs.
State of Maharashtra and anr. ..Respondents

Mr. M.K. Kocharekar for applicant.
Respondent No.1- party-in-person present.
Mr. D.R. More, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : August 17, 2007.

P.C.:

1. Heard Mr. Kocharekar the learned counsel for the applicant.

2. Rule. The respondent no.2 appears as party-in-person and has filed written arguments so as to oppose the application. The learned APP appears for the State.

3. Rule is taken up for final hearing forthwith.

4. The respondent no.2 has filed Criminal Case No.13/S/2001 for the offences punishable under Sections 406, 409, 418, 420 read with Section 34 of

IPC against the present applicant and Mr.Pawan Kumar of M/s.Ramayan Chitra, Juhu, Mumbai. Process was issued in the said complaint against both the accused. The complainant filed his written arguments and prayed for return of raw stock of Rs.3,42,500/- as well as financial dues to the tune of Rs.8,20,000/- claiming that they were fraudulently pocketed by both the accused persons on 31/12/1998 from the business. The complainant claims to be a film distributor and he was running the business under the name and style of M/s.Mheraj Films, Andheri (W), Mumbai.

5. The accused had applied to the trial court for discharge on various grounds and the said application came to be allowed in respect of the accused no.2 as per the order dated 15/9/2003. The prayer for discharge of the accused no.1 was rejected and, therefore, accused no.1 filed Criminal Revision Application No. 802 of 2003. The said revision application came to be dismissed on 15/2/2006 and, therefore, this petition. The Revision Application has been dismissed on the ground that the applicant as well as his advocate were absent.

6. A certified copy of the roznama in Criminal Revision Application No. 802 of 2003 has been placed on record and it appears that till 22/6/2005 the revision was being listed before the court presided over by Shri P.B. Pujari, Additional Sessions Judge, Gr. Bombay (Court Room No.21 and in-charge Court Room No.23). The roznama further shows that till 22/6/2005 on some days the revision applicant as well as his advocate were absent but on some other dates either of them was present or both of them were present. On 4/10/2005 the revision application came to be listed before the court of presiding officer Shri Nitin Dalvi and the applicant as well as his advocate were absent on that day. On 29/11/2005 the advocate for the applicant was present before the court and by consent the revision application came to be adjourned to 23/12/2005. The roznama for 23/12/2005 shows that the learned presiding officer was on leave on that day and, therefore, the revision application was adjourned to 15/2/2006. On 15/2/2006 both the applicant as well as his advocate were absent in the first session and, therefore, it was kept back. The revision was taken

up in the second session and it was dismissed for non appearance with costs of Rs.1000/-.

7. The respondent no.2 party-in-person in his written arguments has pointed out that before the trial court the present applicant is seeking adjournments from time to time and there is virtually no progress in the trial of the case. This application has been filed on 31/7/2006 and it has remained pending for some or the other reasons. The fact remains and as noted hereinabove on perusal of the certified copy of the roznama that on 4/10/2005 the revision application came to be transferred to the court presided over by Shri Nitin Dalvi and on 29/11/2005 the advocate for the applicant was present and by consent the revision was adjourned to 23/12/2005, but again on 23/12/2005 the learned presiding officer was on leave and, therefore, the revision was adjourned to 15/2/2006 and on that date the impugned order has been passed. Undoubtedly, this order was unwarranted and, therefore, unsustainable, as contended by the learned counsel for the applicant.

8. The interest of justice would be better served if the revision is allowed to be restored to the file of the revision court and is directed to be heard within a fixed period but by levying exemplary costs on the present applicant as the certified copy of the roznama does indicate that the applicant as well as his advocate had adopted a very casual approach in conducting the revision application.

9. Hence the petition is allowed and the impugned order dated 15/2/2006 is quashed and set aside. Criminal Revision Application No. 802 of 2003 is restored to the file of the learned Additional Sessions Judge but subject to payment of costs quantified at Rs.5000/-. The costs amount to be remitted with the Sessions Court and the present respondent no.2 is at liberty to withdraw the same. It is further directed the the said revision, on restoration, shall be heard and decided as per law as expeditiously as possible and preferably by 31st October, 2007.

10. Rule is made absolute accordingly.

(B.H. Marlapalle,J.)